



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97725; File No. SR-NYSE-2023-22]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 308

June 14, 2023.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on June 5, 2023, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 308 to correct an obsolete reference. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 308 (Acceptability Proceedings) to correct an obsolete reference.

In March 2023, the Exchange amended Rule 308 to reflect the consolidation of the Acceptability Board with the Hearing Board as defined in Rule 9232(b) (Criteria for Selection of Panelists, Replacement Panelists, and Floor-Based Panelists).⁴ At the same time, the Exchange removed the reference to offices of a member in the second paragraph of Rule 308(d) by deleting “member or” from the final sentence of that paragraph.⁵ In an omission, it did not delete “member or” from the final sentence of the first paragraph of Rule 308(d). It proposes to do so now.

The Exchange proposes to delete the reference because under Rule 2(a) (“Member,” “Membership,” “Member Firm,” etc.), a member is a natural person associated with a member organization who has been approved by the Exchange and designated by such member organization to effect transactions on the trading floor of the Exchange or any facility thereof. As such, a member cannot be a license holder or a registered broker-dealer, and thus would not have an office that “engages in a business involving substantial direct contact with securities customers” as set forth in Rule 308(d), unlike member organizations.⁶

⁴ See Securities Exchange Act Release No. 97206 (March 27, 2023), 88 FR 19334 (March 31, 2023) (SR-NYSE-2023-19) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 308 as Defined in Rule 9232(b) and Delete and Replace Certain Obsolete References). The rule change included the deletion and, where applicable, replacement of obsolete references in the NYSE rules and Listed Company Manual.

⁵ See Exhibit 5 of SR-NYSE-2023-19 (March 17, 2023), p. 37 (“March Filing”).

⁶ See Rules 2(a) (definition of member); 2(b)(i) (defining a member organization as a registered broker or dealer); & 300(a) (providing that trading licenses are issued to member organizations). Accordingly, references to offices of a Member Organization are not proposed to be deleted.

The proposed change would be consistent with both the change made to the second paragraph of Rule 308(d) in the March Filing and with changes made to Rule 308-Equities(d) (Acceptability Proceedings) of the Exchange's affiliate NYSE American LLC.⁷

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that deletion of the obsolete reference to a member in Rule 308(d) would increase the clarity and transparency of the Exchange's rules and remove impediments to and perfect the mechanism of a free and open market by ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public could more easily navigate and understand the Exchange rules. The Exchange believes that it would alleviate any possible confusion that could result from the current reference to the offices of a member or member organization in paragraph one of Rule 308(d) and the offices of a member organization in paragraph two of Rule 308(d). The Exchange further believes that the proposed change would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency and clarity, thereby reducing potential confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

⁷ See Exhibit 5 of SR-NYSEAmer-2023-29 (May 16, 2023), p. 30. See also Securities Exchange Act Release No. 97581 (May 25, 2023), 88 FR 35968 (June 1, 2023) (SR-NYSEAmer-2023-29) (Notice of Filing and Immediate Effectiveness of Proposed Change to Amend Rule 9232 and Rule 308-Equities).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change does not address competitive issues but rather proposes the deletion of an obsolete reference in Rule 308(d).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹² normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹³ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

Commission shall institute proceedings under Section 19(b)(2)(B)¹⁴ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2023-22 on the subject line.

Paper comments:

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSE-2023-22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3

¹⁴ 15 U.S.C. 78s(b)(2)(B).

p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSE-2023-22 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Sherry R. Haywood,

Assistant Secretary.

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